

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 RICHARD GARCIA,  
12 CDCR # T-77914,

13 Plaintiff,

14  
15 vs.

16  
17 C.D.C.R., et al.,

18  
19 Defendants.  
20  
21

Civil No. 12cv1084 IEG (KSC)

**ORDER:**

**(1) DENYING PLAINTIFF'S  
MOTION FOR APPOINTMENT  
OF COUNSEL PURSUANT  
TO 28 U.S.C. § 1915(e)(1)  
[ECF No. 18];**

**AND**

**(2) GRANTING PLAINTIFF'S  
MOTION FOR STAY AND  
EXTENSION OF TIME IN  
WHICH TO FILE OPPOSITION  
[ECF No. 24]**

22 Plaintiff, a state prisoner currently incarcerated at California State Prison–Los Angeles  
23 County (“CSP-LAC”), in Lancaster, California, is proceeding pro se and *in forma pauperis* with  
24 this civil action filed pursuant to 42 U.S.C. § 1983. Plaintiff alleges his rights to adequate  
25 medical care, due process, and to be free of cruel and unusual punishment were violated while  
26 he was an inmate at Centinela State Prison in 2011. *See* Compl. [ECF No. 1] at 1-6.

27 ///

28 ///

**I. Procedural Background**

On November 30, 2012, Defendants filed a Motion to Dismiss pursuant to FED.R.CIV.P. 12(b) and 12(b)(6) [ECF No. 13]. Because Defendants move to dismiss, in part, based on Plaintiff's alleged failure to exhaust available administrative remedies prior to suit pursuant to 42 U.S.C. § 1997e(a), the Court provided Plaintiff with notice and an opportunity to develop the record regarding exhaustion. *See* Dec. 20, 2012 Order [ECF No. 14] at 1-2 (citing *Wyatt v. Terhune*, 315 F.3d 1108, 1119-20 (9th Cir. 2003)). Plaintiff was directed to file and serve his opposition, including evidentiary materials related to exhaustion, by January 14, 2013. Defendants were ordered to reply by January 22, 2013, and the Motion was set for hearing without oral argument as submitted on January 28, 2013. *Id.*

On January 30, 2013, however, Plaintiff submitted a Motion to Appoint Counsel [ECF No. 18], accompanied by a Motion to Stay Defendants' Motion to Dismiss and "expansion of time." [ECF No. 16]. The Court denied Plaintiff's Motion for Appointment of Counsel and granted him an extension of time to file his Opposition to Defendants' Motion. [ECF No. 19]. However, rather than filing his Opposition, Plaintiff has filed virtually the identical request he previously filed seeking appointment of counsel and "request for another stay in abeyance." [ECF No. 24].

**A. Motion for Appointment of Counsel**

"[T]here is no absolute right to counsel in civil proceedings." *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). Thus, federal courts do not have the authority "to make coercive appointments of counsel." *Mallard v. United States District Court*, 490 U.S. 296, 310 (1989); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to "request" that an attorney represent indigent civil litigants upon a showing of "exceptional circumstances." *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). "A finding of the exceptional circumstances of the plaintiff seeking assistance requires at least an evaluation of the likelihood of the plaintiff's success on the merits and an evaluation of the plaintiff's

1 ability to articulate his claims ‘in light of the complexity of the legal issues involved.’” *Id.*  
2 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)); *see also Terrell v.*  
3 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

4 No doubt most pro se litigants “find it difficult to articulate [their] claims,” and would be  
5 better served with the assistance of counsel. *Wilborn*, 789 F.2d at 1331. For this reason, in the  
6 absence of counsel, federal courts employ procedures which are highly protective of a pro se  
7 litigant’s rights. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding pro se complaint to  
8 less stringent standard) (per curiam). In fact, where a plaintiff appears pro se in a civil rights  
9 case, the court must construe the pleadings liberally and afford the plaintiff any benefit of the  
10 doubt. *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). The rule  
11 of liberal construction is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963  
12 F.2d 1258, 1261 (9th Cir. 1992). Thus, so long as a pro se litigant, is able to “articulate his  
13 claims” in light of the relative complexity of the matter, the “exceptional circumstances” which  
14 might *require* the appointment of counsel do not exist. *Wilborn*, 789 F.2d at 1331; *accord*  
15 *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

16 Plaintiff again requests counsel because he claims he does not “understand anything” and  
17 without representation his “case is as good as lost before it even begins.” *See* Pl.’s Mot. [ECF  
18 No. 24] at 1. As the Court stated in its previous Order, these circumstances are typical of almost  
19 every pro se prisoner civil rights cases, and alone are insufficient to demonstrate the type of  
20 “exceptional” circumstances which are necessary to justify the appointment of counsel under  
21 *Wilborn* and its progeny. In fact, Plaintiff has shown that he has a good grasp of basic litigation  
22 procedure, has effected service of his own Complaint and summons via the U.S. Marshal, and  
23 has to date been able to articulate the facts underlying the basis of his suit adequately in light of  
24 its relative legal complexity. *Agyeman*, 390 F.3d at 1103; *Terrell*, 935 F.2d at 1017; *Palmer*, 560  
25 F.3d at 970 (finding district court did not abuse its discretion in refusing to appoint counsel when  
26 pro se prisoner “had done ‘quite a good job’ putting on his case and was able to “present  
27 evidence effectively.”).

28 ///

1 For these reasons, the Court DENIES Plaintiff's Motion to Appoint Counsel without  
2 prejudice. [ECF No. 24.]

3 **B. Motion to Stay and/or Extend Time**

4 Plaintiff also asks the Court to stay the proceedings in this case, and to defer ruling on  
5 Defendants' Motion until it appoints him counsel for him. *See* Pl.'s Mot. to Stay [ECF No. 24]  
6 at 2. The Court has previously granted Plaintiff an extension of time. [ECF No. 19]. The Court  
7 will grant Plaintiff one more extension of time but no further requests will be considered absent  
8 a showing of extraordinary circumstances.

9 **III. Conclusion and Order**

10 For the reasons set forth above, the Court hereby:

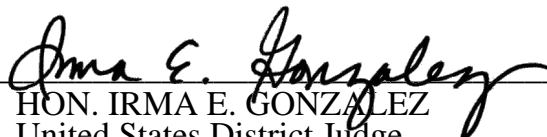
- 11 1) **DENIES** Plaintiff's Motion for Appointment of Counsel [ECF No. 24]; but  
12 2) **GRANTS** Plaintiff's Motion to Stay and Extend Time [ECF No. 24].

13 Plaintiff shall have until **Monday, May 20, 2013**, to file and serve his Opposition to  
14 Defendants' Motion to Dismiss [ECF No. 13]. Defendants, for their part, shall likewise be  
15 provided additional time, or until **Tuesday, May 28, 2013**, to file and serve their Reply.

16 Following these submissions, unless otherwise Ordered, the Court shall thereafter enter  
17 its written decision on the papers without requiring appearances of any kind or holding any oral  
18 argument. *See* S.D. CAL. CIVLR 7.1(d)(1).

19 **IT IS SO ORDERED.**

20  
21 DATED: April 25, 2013

22   
HON. IRMA E. GONZALEZ  
United States District Judge